



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 5, 1989

Mr. Lloyd Garza  
City Attorney  
City of San Antonio  
P. O. Box 9066  
San Antonio, Texas 78285

Open Records Decision No. 531

Re: Whether a city police department's "Use of Force" policy is excepted from disclosure by section 3(a)(8) of the Open Records Act (RQ-1640)

Dear Mr. Garza:

You inform us that the city of San Antonio has received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for a copy of the San Antonio Police Department's "Use of Force" policy. You believe that this information is excepted from public disclosure by section 3(a)(8) of the Open Records Act as interpreted in Open Records Decision No. 22A (1974).

Section 3(a)(8) of the Open Records Act provides that the following information is excepted from disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Open Records Decision No. 22A (1974) considered the applicability of section 3(a)(8) to the police manual of the University of Texas Special Services-Security Division. The manual contained "detailed information for use by police officers concerning investigation and detection of crime and enforcement of criminal laws." Open Records Decision No. 22A, at 2. The bulk of the information in the manual was excepted from disclosure by section 3(a)(8) of the Open Records Act, although the "purely administrative" information it contained was available to the public. Id. at 3.

Since Open Records Decision No. 22A was issued in 1974, section 3(a)(8) has been interpreted in judicial decisions and in numerous decisions of this office. See, e.g., Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977); City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316 (Tex. App. - Houston [1st Dist.] 1984, no writ); Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curium, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 506 (1988); 413 (1984); 341 (1982); 143, 127 (1976). The Texas Supreme Court has held that section 3(a)(8) applies to information held by a law enforcement agency if release "will unduly interfere with law enforcement and crime prevention." Ex parte Pruitt, *supra*, at 710. We will evaluate the records you have sent us in terms of this test and decisions that apply it, rather than relying on Open Records Decision No. 22A. The legal analysis in Open Records Decision No. 22A should no longer be relied upon.

You have sent us sections 505.01 through 505.04 of the General Manual of the San Antonio Police Department, a three-page document on the use of force. Section 505.01 gives a brief introduction, and section 505.02 defines some terms used in the document. Section 505.03 gives detailed guidelines on the application of force. Section 505.04 gives detailed guidelines on the use of deadly force. Your letter makes the following statements about these procedures:

The Department specifically prepared these procedures for internal use to provide tactical assistance for the Department's members. Although the Department requires compliance with the Procedures, interpretation and application of the procedures depend on a case by case, totality of the circumstances analysis. . . . Furthermore, the release of this information has the potential for interfering with law enforcement objectives in that it may equip the public, and particularly criminals, with guidance as to the type of conduct which an officer must tolerate before he may exercise the use of force, and have the effect of encouraging these individuals to tailor their behavior accordingly.

Some of the information in the document restates Penal Code provisions, common-law rules, and constitutional

limitations on the use of force. See Tennessee v. Garner, 471 U.S. 1 (1985) (use of deadly force to prevent escape of unarmed, nondangerous suspected felon violated Fourth Amendment); Penal Code ch. 9; 7 Tex. Jur.3d Assault and Battery §§ 8-15 (1980). We do not believe that disclosing these generally-known policies will unduly interfere with law enforcement and crime prevention.

The document also includes highly specific guidelines for police officers confronted by violence or threatened violence when effecting an arrest or protecting the public safety. The information in these portions of the document is not duplicated in Penal Code provisions or judicial decisions on the use of force. It is reasonable to conclude that knowledge of these detailed guidelines would place an individual at an advantage in confrontations with police officers and would increase his chances of evading arrest or injuring the officer or other persons. This office recognized a similar law enforcement interest in Open Records Decision No. 413 (1984), which concluded that section 3(a)(8) of the Open Records Act allowed the Department of Corrections to withhold a sketch showing barriers that it planned to put in place as security measures during an execution. Open Records Decision No. 413 stated as follows:

The release of the requested sketch could seriously impair the ability of the Department of Corrections to maintain necessary order during the next scheduled execution. Executions are inherently volatile events. Effective crowd control is difficult enough even under the best of circumstances, and in our opinion such control would be made unreasonably difficult if a sketch showing planned security measures were released.

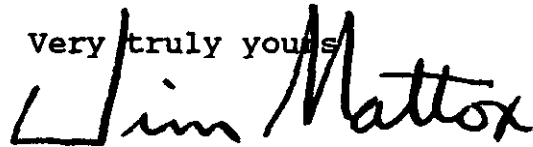
Id. at 2.

Situations in which a law enforcement officer needs to resort to the use of force are also unpredictable, and release of the specific guidelines on use of force could impair an officer's ability to arrest a suspect or protect the public peace. We believe that release of the detailed guidelines would unduly interfere with law enforcement and crime prevention. Accordingly, they are excepted from disclosure by section 3(a)(8) of the Open Records Act. We have marked the portions of the policy that need not be released.

S U M M A R Y

Section 3(a)(8) of the Open Records Act authorizes the San Antonio Police Department to withhold the portions of its "Use of Force" procedures prepared for its officers that state detailed guidelines on the use of force. The portions of the procedures which restate generally known common-law rules, constitutional limitations, or Penal Code provisions are open to the public.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, stylized "J" and "M".

J I M M A T T O X  
Attorney General of Texas

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